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Autonomy, Moral Constraints, and Markets in Kidneys

Is it morally permissible to buy a kidney from someone who chooses for money to undergo a nephrectomy? Let us call this sort of purchase of kidneys "market exchange."[1] In conditions prevalent in our world, market exchange, even if legal and regulated, would often be morally wrong, I claim. It would often be wrong even though it might not only be consensual, but also save lives and reduce suffering by increasing the number of kidneys available for transplant. Yet I do not claim that market exchange is intrinsically wrong, that is, wrong in every possible context. If political, economic, and social conditions were different—if the world were closer to Kant's kingdom of ends than to Hobbes' state of nature—then market exchange might typically accord with moral requirements.

I believe that there are moral constraints on consensual buying and selling. For example, it can be wrong for a buyer to purchase another person as a slave even if the other consents to being purchased and the purchase would do more good as a whole than any other action the buyer could perform. I will argue that, under current conditions, market exchange involving kidneys would often violate two principles that are seen as moral constraints. One principle forbids expressing disrespect for the dignity of humanity; the other forbids treating others merely as means. My approach to these principles differs from approaches commonly taken to them in

[1] Of course, there might also be buying and selling of cadaveric kidneys as well as other sorts of monetary exchange involving kidneys. But by "market exchange" here I mean to focus solely on cases in which, for money, a living person sells his kidney for extraction while he is alive and hopes to recover from the operation.

the literature on organ markets, so I will need to explain what I mean by them. Especially since market exchange is likely to conflict with the principle that others are not to be treated merely as means, it makes sense to seek an alternative way of diminishing the current organ shortage. Opt-out systems of cadaveric organ donation might accomplish this goal. In any case, my first task will be to consider an innovative and interesting way of defending legal, regulated market exchange recently developed by James Taylor (Taylor, 2005). If Taylor is right, then given what many of us hold to be of fundamental value, we are rationally compelled to embrace such exchange.

I. Autonomy and Markets in Kidneys

In defense of regulated and legal market exchange of kidneys, Taylor appeals to the intrinsic value of autonomy, that is, to the intrinsic value of agents directing their lives in accordance with plans they reflectively endorse. He argues that if we hold autonomy to be valuable in itself, as he points out many bioethicists do, then we ought, other things being equal, to embrace such exchange.[2] For allowing it promotes autonomy, both that of the buyers, whose very lives might depend on the purchase, and that of the sellers, who without money from such a sale would be unable to pursue goals of central importance to them, such as that of securing a good education for their children. In short, allowing market exchange promotes autonomy in the sense that it provides options for individuals to direct their lives in accordance with plans they reflectively endorse.[3]

[2] For evidence that Taylor claims to have an argument for market exchange that appeals to the notion that autonomy is intrinsically, as opposed to merely instrumentally, valuable, see, for example, Taylor 2005, 19, 189, and 200-201.

[3] On the conception Taylor suggests, to promote autonomy is to promote something that is intrinsically valuable. But that does

Taylor favors market exchange of kidneys on the grounds that it promotes autonomy. But, according to him, *respect for autonomy* sometimes morally requires us to construct institutions so as to *disallow* certain autonomously chosen actions of selling, namely those that stem from an agent's having taken a "constraining option." A constraining option is one such that a person's choosing it is "likely to result in the overall impairment of [his] autonomy" (65) or of the autonomy of other members of his group (73). A choice results in the overall impairment of a person's autonomy if he is less able to exercise his autonomy after the choice than he was before it. The option to sell oneself into slavery would presumably be a constraining option. Although one might autonomously choose to do so, say, in order to save one's family, taking this option is, of course, likely to impair one's autonomy in the future. One's ability to direct one's own life is likely to be curtailed if one belongs to someone else. According to Taylor, selling a kidney can also be a constraining option. In fact, it has been such an option for very poor people who sell their kidneys in unregulated markets. As a well-known study of black market kidney exchanges in Chennai, India has illustrated (Goyal et al 2002), vendors experience a post-nephrectomy decline in health and income that, as Taylor puts it, "eliminates the possibility of their pursuing certain options that were available prior to the nephrectomy" (87) and thereby diminishes their autonomy. Since, by offering people money for their kidneys, black markets encourage them to act on constraining options, respect for autonomy demands that such markets be stopped, Taylor argues. So if regulated markets also encouraged people to act on constraining options, then respect for autonomy would presumably also demand that they be stopped, according to him.

Taylor is confident, however, that *regulated* markets would not generate constraining

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not, of course, preclude that promoting autonomy will be instrumentally valuable. An increase in an agent's ability to pursue the ends she has chosen for herself might help bring about an increase in her happiness, for example.

options for organ sellers. If regulations required that sellers be healthy enough at the outset to recover fully from nephrectomy, that they receive adequate postoperative care, and that they give their informed consent to the procedure, then becoming a seller would not typically diminish one's autonomy, according to Taylor. In other words, becoming a seller would not typically curtail one's ability to pursue projects that one reflectively endorses.

But his confidence lacks warrant. As Taylor acknowledges, in a regulated market just as in a black market, typical sellers would be poor, taking the only means available to them to get desperately needed funds (35). Even if a regulated market largely forestalled the physical problems kidney sellers experienced—and, as I explain below, I think there is reason to doubt that it would—such a market would not necessarily prevent them from suffering psychologically. A study of kidney sellers in Iran, where there is a regulated market, has shown that vendors frequently experience feelings of worthlessness and shame.[4] They perceive themselves as akin to prostitutes and their scars as stigmata (Zargooshi, 1795-1796). Common psychological effects of selling a kidney in Iran are anxiety and depression (1790, 1796), which can be just as autonomy-diminishing as the physical effects of selling in a black market. "Vending," says Zargooshi, "especially the psychological complications, severely affected employment potential" (1794).

Moreover, the stigma associated with kidney vending sometimes extends to members of the group to which the vendor belongs, at least if the group includes the vendor's family and village. The Chennai slum of Villivakkam got the nickname "Kidneyvakkam," as a result of

[4] Not many studies have addressed the well-being of Iranian kidney vendors. Malakoutian et al 2007 report that 91% of vendors "were satisfied with donation" and 53% suggested that others sell a kidney (825). But Nejatisafa et al 2008 (939) find that after kidney extraction, the average quality of life among sellers in Tehran, measured in part in terms of physical and psychological well-being, is lower than the average among the population of Tehran. For general discussion of the regulated market in Iran, see Hippen 2008.

many of its residents having sold a kidney (Cohen, 1999, 137). A young man in Chennai complained that other boys taunted him, saying that his mother was a kidney seller (Cohen, 1999, 140). Studies are needed to determine the effects of such stigma by association, but it is reasonable to worry that it might curtail the ability of those stigmatized to pursue aims they have set themselves.

The autonomy of people in whose region kidney selling is widespread might be truncated in yet a further way. People sell their kidneys in an often futile effort to repay debts (Naqvi et al 2007, 936; Goyal et al 2002, 1591). That has been true in black markets and would presumably also be true in regulated ones. But as a result of realizing that residents of a particular area are willing and able to sell their kidneys for cash, moneylenders might become increasingly aggressive in their debt collection (Cohen, 1999, 152). Being the object of aggressive debt collection can reduce one's autonomy, it is reasonable to assume. If one is forced to raise money more quickly and in greater quantities than one would have been, one might find oneself with less opportunity to promote ends one holds to be of central importance, such as that of setting up one's own business. So for people living in a kidney-selling region, a regulated market might have autonomy-diminishing effects.

Thus far we have been assuming along with Taylor that a regulated market would be an *effectively* regulated market. In other words, we have been taking it for granted that governments and businesses would largely abide by the rules Taylor sets out, including rules requiring informed consent and adequate post-operative care. As I have just argued, even under this assumption it seems precipitate to conclude that such a market would fulfill Taylor's own condition of moral legitimacy and avoid introducing autonomy constraining options for vendors.

But how plausible is the assumption in the first place? If regulated markets in kidneys

were widespread, according to Taylor, the organs would flow from poor countries to wealthy ones. But poor countries tend to have poor, that is, cash-starved and ineffective, regulatory infrastructures. It seems naïve to assume that a regulated market in a very poor country would be an effectively regulated market. Government prohibitions against organ sales have been flouted in the Philippines, which has an active organ trade (Mediavilla, 2007). In India, laws on the books get ignored by corrupt officials. For example, although it violates regulations there to donate a kidney to a stranger, officials in certain areas routinely approve such donations, which are very often actually sales (Goyal et. al. 1591-1592). Might not corrupt officials also sign off on reports certifying that vendors have given their informed consent or that they are receiving adequate post-operative care? In a poorly regulated market, vendors might suffer from the same autonomy constraining effects they experience in the black market.

Granted, wealthy organ-importing nations might pass rules according to which, say, kidneys can be obtained only from countries who have embraced some international standard regarding the treatment of vendors. But even if a country embraces such a standard in good faith, rather than as a purely cosmetic measure, it might not have the resources to insure that its citizens abide by it. Even if Taylor's autonomy-based arguments ground a commitment to an effectively regulated market in kidneys—and again, I do not believe they do—they fail to support the conclusion that regulated markets should be established under real-world conditions.

II. Expressing Disrespect for the Dignity of Kidney Sellers

Although Taylor does not tend to use the vocabulary of moral constraints, he seems to embrace a moral constraint on the promotion of autonomy. He suggests that it can be wrong to do something even if, overall, doing it promotes the autonomy of those affected more than it

diminishes it. In particular, if we set up an institution in which persons' autonomous choices to do something would, in the end, limit their autonomy or that of typical members of their group, then our setting up this institution can be wrong. Our doing so can be wrong even if it yields an overall advancement of autonomy by, for example, producing small losses in autonomy for some but large gains in it for the same or a similar number of others. So if we set up a market in kidneys in which vendors' autonomous choices to sell would, in the end, diminish their own autonomy or that of typical members of their group, then we might be acting wrongly, even if, overall, our setting up this market promoted autonomy by saving transplant-recipient's lives. In short, Taylor seems to embrace a constraint against disrespecting the inherent value of vendors' autonomy.

I believe that there are other moral constraints, or at least principles that are worthy of attention as candidates for moral constraints, that even a well regulated market might violate. As is well known, Kant condemns as morally impermissible a person's selling one of his organs (Kant 1797, 423). Elsewhere I offer a detailed interpretation, or more accurately, reconstruction of his position (Kerstein 2009b). Here I summarize this reconstruction in order to show that some participants in markets in kidneys might run afoul of a Kantian constraint, namely one against failing to express respect for the value, that is, the dignity, of humanity.[5]

[5] Based on a reading of Kant, Mark Cherry contends that the sale of organs violates Kant's Categorical Imperative only if at least one of the following three criteria are fulfilled: the sale puts life in danger, these organs "are equivalent to oneself as the subject of morality in one's own person," or the sale "is not associated with a discharge of a duty" (Cherry 2005, 135). Cherry then argues that none of these criteria need be fulfilled in a given sale of an organ. "In principle," says Cherry (136), "Kant should not have an objection to selling organs when the risk to life is de minimis and when it is to discharge a duty, such as to care for one's family." According to the reconstruction of one version of the Categorical Imperative (the Formula of Humanity) that I sketch below, the sale of organs might violate this principle without fulfilling any of the criteria Cherry mentions. Cherry and I appeal to

Kant's Formula of Humanity commands that we treat persons as ends in themselves, never merely as means (Kant 1785, 429). According to one prominent interpretation of this principle, namely what I call the value-based interpretation (Wood, 1999), it amounts to the following command:

VFH: *Act always in a way that expresses respect for the worth of humanity, in one's own person as well as that of another*.

Of course, this principle is to be understood as a categorical imperative: a principle that all of us have an overriding obligation to conform to, regardless of what we might be inclined to do. We need to keep in mind from the outset that a type of action might express respect for the worth of humanity simply by virtue of expressing no disrespect for it. VFH does not entail that every morally permissible type of action involves some positive affirmation of the value of humanity. We should also note that Kant uses "humanity" interchangeably with "rational nature" (Kant 1785, 439). In doing so, he suggests that having humanity involves having certain rational capacities. Among these are the capacities to set and pursue ends and to conform to self-given moral imperatives purely out of respect for these imperatives (Hill 1992, 38-41).

VFH commands that we act always in a way that expresses respect for the worth or, equivalently, the value of humanity. But what is that value? First of all, it is a value that attaches to something already extant, an "independently existing" end, rather than to something that needs to be brought into existence. An appropriate reaction to the value of the sort that humanity has is to honor, cherish, or preserve it, rather than to bring more of it about. Second, humanity has absolute or *unconditional* worth (Kant 1785, 428). That means it is good under every possible condition, that is, in every possible context, in which it exists. Third, humanity has

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different interpretations/reconstructions of the Categorical Imperative.

incomparable worth. That is, it has no equivalent for which it can be legitimately exchanged (Kant 1785, 434-6; Kant 1797, 434-435, 462). Humanity can never be legitimately sacrificed for or replaced by something with mere price. Not even all the oil in the North Sea would truly compensate for the killing of one rational agent. Moreover, since humanity possesses incomparable worth, it cannot even be legitimately sacrificed for or replaced by something else with such worth. It makes no sense to say that in some context one or more instances of humanity have more or less value than one or more other instances of humanity. In Kant's view, everything that lacks incomparable worth has mere price, including human happiness and well-being. In Kant's terms, to say that humanity is unconditionally and incomparably valuable is to say that it has "dignity." In his view, humanity and humanity alone has dignity.

In order to derive duties from VFH to act (or refrain from acting) in some way, we must rely on *intermediate premises*: premises that specify whether some sort of conduct expresses respect for the worth of humanity. The following is an example of an intermediate premise: committing suicide to avoid suffering expresses disrespect for the value of humanity. If this premise is true, it follows that we have a duty not to commit suicide to avoid suffering.

Two points regarding intermediate premises warrant attention. Intermediate premises are logically independent of VFH in the sense that the truth of this principle does not itself guarantee the truth of any such premise. That we ought always to act in a way that expresses respect for the worth of humanity does not itself entail that any particular kind of conduct in fact expresses or fails to express such respect. Moreover, intermediate premises are "hermeneutical"; that is, "they involve interpreting the meaning of actions regarding their respect or disrespect of the dignity of rational nature" (Wood 1999, 154).

A charitable way of reconstructing Kant's moral discomfort with markets in body parts is

to understand it to rest on VFH, coupled with two further claims. First, if an action of a particular type tends to encourage or promote a notion that clashes with the idea that persons have dignity, then it expresses disrespect for the value of humanity. Second, in many contexts, actions of buying and selling body parts do encourage or promote such a notion. These two claims combined constitute an intermediate premise. Assuming that the claims as well as VFH are true, together they generate the conclusion that in many contexts actions of buying and selling body parts are wrong.

A brief illustration and discussion of the second claim might be helpful. In late 18th-century Europe, rich people would sometimes purchase live teeth from the poor. For very high fees, surgeons would extract the teeth and implant them into their customers' mouths, trying, apparently with some success, to get them to take root in their new environment. The customers purchased the teeth largely for aesthetic reasons; white, healthy teeth were in fashion (Blackwell 2004). Now let us suppose that a contemporary of Kant sold a tooth to increase his comfort, an action that Kant explicitly condemns. In Kant's cultural context this was arguably an action of a type that tended to promote or encourage the idea that some person lacks value that transcends price. According to Blackwell (51), it was common for educated people in the period to see tooth transplantation as a procedure in which "body parts from the poorest and blackest of the poor are magically transformed into precious luxuries" and in which "the consumption of goods becomes indistinguishable from the consumption of people reduced to commodities." So it seems reasonable to claim that the poor offering their intimate body parts for sale promoted the idea that the poor themselves (their humanity) lacked dignity. This claim might, of course, be true even if a particular case of a person's selling a tooth for comfort did not result in anyone's embracing (or moving closer to embracing) the idea that the seller lacked dignity. But in order

for the claim to be true, actions of the type "poor lower class 18th-century European selling his tooth to augment his comfort" must have frequently made someone more inclined than he otherwise would have been to accept the notion that someone's humanity had mere price.

Now let us return to the cases of central concern to us, namely those of buying and selling kidneys. Take a citizen of a developing country that has adopted a market in order to generate funds for its treasury. He is a 25-year old, married laborer who has struggled to make ends meet. Expenses for food, housing, and, especially, medical care for his wife have landed him in debt. His creditors are harassing him to pay up. A government employee gives the laborer a thorough and comprehensible description of the short and long term health risks posed by kidney extraction as well as of the benefits he'll receive from the government if he sells his kidney, including $2,500 and health insurance for life. The laborer goes through with the sale and indeed receives the cash and insurance coverage.

Depending on the context, the government's action might express disrespect for the dignity of persons and thereby violate VFH. As Taylor acknowledges, it makes sense to imagine that not only in this instance, but also as a rule, the government would be purchasing organs from some of the least well-off members of society. Those selling their kidneys in Iran, one of the few places where a regulated market exists, tend to be in poverty and debt (Zargooshi 2001). Unless the price of a kidney got very high indeed, it seems unlikely that many privileged or even middle-class citizens of most nations would choose to undergo kidney extractions for money. So the government in our example would likely perform an action of the type, "buying a kidney from an informed and consenting but poor and desperate adult in order to fill the treasury." Actions of this type may well encourage the view that the poor themselves, not merely parts of their bodies, constitute a fungible resource. If they do encourage this view, then the government

violates VFH.[6]

Of course, even if the government violates VFH, one might not consider this to be a serious mark against its action. For one might not find VFH to be a plausible moral principle in the first place.[7] But one does not have to accept VFH entirely to think that there would be something morally problematic in a practice that encouraged the view that, unlike their wealthier neighbors, poor citizens have the value of tools to be used at will.

III. Treating Kidney Sellers Merely as Means

Participants in a well-regulated market would likely violate a second principle that might have status as a moral constraint, namely one forbidding persons from treating others merely as means, or so I will now try to show. A principle of this kind is, of course, associated with Kant; it is part of his Formula of Humanity, albeit a part that is not privileged on the interpretation according to which this formula amounts to VFH. I have elsewhere discussed how to understand and reconstruct Kant's notion that persons are never to be treated merely as means (Kerstein 2009c). But here I would like to introduce a different understanding of treating others merely as means—one that in the end might have little basis in Kant but that, I believe, has a solid basis in ordinary moral thinking.

A first step in developing a constraint against using others merely as means is to specify what is meant by using a person at all. Let us say that a person uses another person as a

[6] Of course, other types of action that involve using poor persons, even when they agree to be used and are well informed regarding the nature of the use, can be wrong, according to the interpretation of VFH offered here. For example, it might be wrong to hire a consenting and well-informed adult as a prostitute or to do dangerous work for a low wage. For doing so might promote the notion that these persons fail to have dignity.

[7] Indeed, elsewhere I argue that it has some serious shortcomings (Kerstein 2009a).

means—or, equivalently, treats another person as a means—if she does something to the other's body or mind in order to realize one of her ends, and she intends the other's body or mind to contribute to the end's realization (Scanlon 2008, 106-7). Someone uses a lawyer as a means in retaining him in order to avoid prison. She intends his lawyerly skills to contribute to her future freedom. Of course, we use one another as means every day. And, very often, there is nothing morally wrong with our doing so.

A person goes wrong, however when she treats another *merely* as means, that is, when she "just uses" the other.[8] I will sketch what I take to be a sufficient condition for a person's doing this. I believe that this condition is plausible, but I do not give a full defense of it here.

Suppose that, as a computer technician knows, her customer aims today to email a document, the only copy of which is on the customer's hard-drive. If received today, the document might be very helpful in the customer's effort to secure a promotion. But his computer is frozen and she is the only one in position to fix it. The technician uses him to make a profit by getting him to authorize her to do the repair at her usual fee. But the computer is malfunctioning as a result of the technician's having on a previous service call intentionally left his machine vulnerable to malware in the hope that she would someday earn a profit on a call to repair it. I think we would say that in getting the customer to authorize the repair, the technician is treating him merely as a means. She is treating the customer merely as a means even though the customer consents to the repair.[9]

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[8] Strictly speaking, this claim seems too strong. As I make clear at the end of this section, I view moral constraints as defeasible. In extraordinary circumstances, it might not be wrong to treat another merely as a means.

[9] Mark Cherry says that "we do not treat someone merely as a means if he consents to be so treated" (2005, 98). I doubt whether Kant would ascribe to this view, and I obviously do not believe that the view reflects ordinary understanding of treating someone merely as a means.

But suppose that on the initial service call instead of intentionally leaving the customer's machine vulnerable to malware in order to make a profit, the technician foreseeably but not intentionally leaves it vulnerable. She is just in a hurry to get the job done and so cuts corners. In this case, she does not intend the customer's vulnerability to malware to be a means to any of her ends. Nevertheless, in this case as well it would be implausible to imply that on the second call, when the customer needs a repair to email his document, the technician avoids treating the customer merely as a means. She does treat him merely as a means by profiting from a vulnerability in him for which she bears responsibility.

Based on this sort of example, we might say that an agent uses another merely as a means if, in a way foreseeable to her, something she has done or is doing to the other contributes to making it the case that the other's overall well-being will diminish (relative to its present level) unless the agent uses him. But this proposed sufficient condition for using another merely as a means suffers from a serious flaw, which is easy to illustrate with an example. A surgeon has pioneered an operation to correct a patient's problem. The patient understands the significant risks that the operation carries, one of which is that the surgeon might have to perform a second surgery. The surgeon will not operate on the patient at all unless the patient consents to these risks, and the patient does so. A few days after the procedure, something goes wrong and the patient's life is in jeopardy. The only one who can save him is the surgeon, by operating again. The account implies, implausibly, that in operating again the surgeon is treating the patient merely as a means. For something he has done to him, namely perform the first operation, has contributed to making it the case that the patient's overall well being will decrease unless the surgeon uses him, that is, does the second operation. In general terms, when a person has had the opportunity to assume the risk that an agent's treatment of him as a means will create a need in

him for more such treatment, it can be implausible to conclude that the agent is "just using" the other.

Fortunately, the shortcoming in the account is simple to rectify with a more sophisticated account:

> Suppose an agent uses another. She uses him merely as a means if, in a way foreseeable to her, something she has done or is doing to the other contributes, without the other's having been able to consent to the risk that it would do so, to making it the case that the other's overall well being will diminish unless the agent uses him.

The patient in our example had the opportunity to consent (and did consent) to the risk that the first operation would make it the case that unless he had a second one, his health would deteriorate. So this account does not imply that the surgeon is "just using" the patient. Of course, I do not wish to imply that the only way to use another merely as a means is to fulfill the condition specified in the account. Elsewhere I offer other sufficient conditions for using another merely as a means (Kerstein 2009c).

Now let us return to the issue of market exchanges involving kidneys. One obvious way of trying to insure that a market is well-regulated is to require that there be a single buyer, namely the government. Other buyers might have less incentive and less ability to insure that sellers have given their informed consent to organ extraction and get adequate post-operative care. As I have indicated, I am skeptical as to whether even the governments of the very poor countries (or regions) who would be the likely source of organs would do a good job of insuring compliance with regulations. But let us suppose for the sake of argument that they did. Recall our laborer who is in debt and whose creditors are harassing him to pay up. A government employee gives the laborer an accurate account of the health risks posed by kidney extraction and then, on behalf of the government, buys his kidney from him for $2,500 and health insurance

for life.

Depending on how the laborer arrived in his situation, the government (through its agent) might count as treating him merely as a means. The government is, of course, using him. Moreover, let us make the plausible assumptions that the laborer's overall well being will diminish from its present level unless he sells his kidney and that he had no opportunity to consent to his being in these circumstances (e.g., he isn't poor because he took a calculated risk on the stock market). The key questions here are whether the government, perhaps through its economic policies, helped put the laborer in this situation and whether it was foreseeable to it that it would do so. If the answers to these questions are affirmative, then the government is treating the laborer merely as means and thereby acting wrongly. It is acting wrongly even though the laborer consents to the sale of his kidney and receives adequate post-operative care.

Of course, it would be a complicated empirical question whether a government that developed a well-regulated market in kidneys had foreseeably contributed to bringing about conditions in which some of its citizens would need to sell an organ to preserve their welfare. In any case, I do not wish to claim that well-regulated markets in organs, wherever or whenever they were established, would necessarily violate a constraint against treating persons merely as means. I wish only to highlight the danger that in the world as we know it such markets would do so.

Let me stress that in my view neither of the principles I have discussed, that is, neither VFH nor the prohibition on treating others merely as means, could plausibly be considered to be an absolute moral constraint. Moral constraints are, I believe, defeasible. If a good can be secured only by performing actions they proscribe and that good is ample enough, then they no longer apply. So if the *only* way for a government to save thousands of its citizens lives were for

it to treat some of its poor citizens merely as means, then *perhaps* it would, all things considered, be permissible for it to do so.

IV. Conclusion

Proponents of market exchange often leave the impression that embracing it is the only viable means to diminish organ shortages. But that impression is false. Many countries with organ shortages, including Australia, Germany, Great Britain, and United States, have opt-in systems of cadaveric organ procurement. They require that potential donors give their explicit consent to donate before death. These countries might reduce their shortages by replacing their opt-in systems of donation with opt-out systems. In this sort of system, citizens are presumed to consent to donating their organs at death, but can opt out of donation if they choose. Spain, the country with the highest deceased-donor rate in the world, has an opt-out system in place. According to a recent analysis, even when "other determinants of donation rates are accounted for," opt-out countries have approximately 25-30% higher donation rates than opt-in countries on average (Abadie and Gay 2006, 610).[10] British Prime Minister Gordon Brown as well as the German National Ethics Council have recently called for their countries to adopt opt-out programs in an effort to reduce shortages.[11]

It makes sense to give alternatives to markets in organs, such as opt out programs, serious

[10] For a more skeptical view regarding the influence of opt-out policies on organ procurement, see Healy 2006.

[11] In a brief discussion, Taylor questions both the morality and the effectiveness of a system of "presumed consent." He says that the main ethical objection to such a system is that "it will enable the state to take a person's property without his consent" (1995, 8). But a system could be designed to give citizens a well-publicized opportunity to opt out of having their organs taken. I simply do not see what serious ethical objection would then remain. See Gill (2004). Taylor doubts whether opt-out systems really yield more organs for transplant than do opt-in systems. But the research I have cited (Abadie and Gay 2006) should go some way toward diminishing these doubts.

consideration.[12] For the moral dangers of markets are significant. In real-world contexts organs are likely to be purchased from poor populations. Contrary to Taylor's suggestion, I do not find good reason to believe that establishing markets would respect the autonomy of members of these populations. Indeed there is good reason to believe that doing so would introduce autonomy-constraining options for them. And there are also grounds to fear that organ purchasers might violate moral constraints by expressing disrespect for the sellers' dignity and, especially, by treating them merely as means.[13]

[12] If, contrary to my expectation, robust opt-out systems fail to significantly reduce organ shortages, then we should try other measures. For example, we might establish an "organ draft" that would proceed (very roughly) as follows: Each year, those selected in a random drawing among citizens of a prescribed age would be screened for their physical and psychological suitability to donate a kidney. Remaining candidates would, as needed, then be required by law to give up their organ and be paid by the government a fixed price for it. Rich and poor would have equal chances of providing a resource to their fellow citizens. I do not believe that the failure of an opt-out system would itself override moral constraints proscribing the sorts of organ markets Taylor envisages, namely ones in which organ sellers are for the most part very poor.

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